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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S. B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S. B.,

Defendant and Appellant.

E056724

(Super.Ct.No. J244355)

OPINION

APPEAL from the Superior Court of San Bernardino County. Larry W. Allen,
Judge. Reversed with directions.

Paul J. Katz, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Stephanie H.
Chow, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant S. B. (the “minor”) is a ward of the juvenile court in placement at a foster facility after the court found true allegations that he committed solicitation for murder (Pen. Code, § 653f, subd. (b)). The minor had asked friends to help him kill a boy whom he believed had stolen his bicycle. In this appeal, the minor argues, and the People agree, that the court failed to determine whether the minor was suitable for Deferred Entry of Judgment (DEJ). The prosecutor indicated in the Form JV-750 “Determination of Eligibility” that the minor fulfilled each of the statutory requirements for DEF, but erroneously checked the box indicating the minor was “ineligible.” Further, the prosecutor did not issue the Form JV-751 Citation and Written Notification for Deferred Entry of Judgment – Juvenile. To remedy this error, the minor asks this court to vacate the juvenile court’s jurisdictional findings and dispositional orders and remand so that the juvenile court can consider whether to grant DEJ. The People agree. As discussed below, we vacate the jurisdictional findings and dispositional orders and remand to the juvenile court to conduct a hearing under Welfare and Institutions Code section 790¹ to determine whether the minor is suitable for DEJ.

FACTS AND PROCEDURE

The minor’s mother found some letters in his room explaining how he wanted to kill a friend, who had recently moved away, because he believed the friend had stolen a bicycle from him about one month before. The letters included a step-by-step description

¹ All section references are to the Welfare and Institutions Code unless otherwise indicated.

of how he would break in, capture and kill the victim. Law enforcement officers contacted two other friends, who stated that the minor had asked them several times to help him kill the boy, but they had refused. The minor had in his room a bag containing a knife, rope, gloves, beanie hats, and a hammer. The minor denied to law enforcement that he planned to carry out the attack, but told his mother that the boy “deserves it.”

On May 25, 2012, the People filed a section 602 petition alleging the minor solicited the commission of a murder. Along with the petition the People filed a Form JV-750 “Determination of Eligibility” for juvenile DEJ. The form contains boxes 1(a) through 1(g), allowing the prosecutor to check off eligibility criteria for DEJ, as set forth in section 790. On the form, the prosecutor checked each of the boxes indicating the minor fulfilled the requirements to be considered “eligible” for the juvenile court to determine whether he is “suitable” for DEJ. However, the prosecutor did not check box 2-a, which states, “The youth is eligible.” Rather, the prosecutor checked box 2-b, which states, “The youth is ineligible.” In addition, the prosecutor did not attach form JV-751, “Citation and Written Notification for Deferred Entry of Judgment – Juvenile,” which was to be provided to the minor and his attorney (§ 790). The minor and his attorney were not notified that he was eligible for DEJ, and the program was not discussed at any of the minor’s court appearances.

On June 19, 2012, the juvenile court held the contested jurisdiction hearing and found true the allegation that the minor had committed solicitation for murder. At that time the minor was 14 years old.

In the disposition report, the probation officer described the minor's drug use, physical and emotional abuse of his mother and destruction of her property, his very long history of getting in trouble at school and being violent with other students, and his bullying of younger cousins consisting of dunking them in the pool and locking one in a dog carrier. The minor's mother stated that she is afraid of him, and has removed the knives from her home, but the minor makes homemade "shanks." The mother fears that he will be a danger to the community when he is able to drive and more easily have access to other people. The psychologist who conducted the minor's psychological evaluation concluded that he is a high danger to the community and that "under no circumstances" should he be released into the community, or even to a placement facility that is not locked, until he received "significant intervention." Under the "Tarasoff" law, the psychologist informed the minor's mother that he considers the minor a danger to her. He also opined that, "unless significant intervention is accomplished successfully, when the minor achieves adulthood, he will meet the criteria of APD [anti-social personality disorder] and would be considered a high danger to the community."

At the disposition hearing held on July 2, 2012, the juvenile court declared the minor a ward of the court and placed him in the custody of the probation officer to be maintained in juvenile hall pending placement in a foster facility. The minor filed his notice of appeal on July 18, 2012.

DISCUSSION

The parties agree that, based on the prosecutor's answers to part 1 of form JV-750, the juvenile court is required to hold a hearing to determine whether the minor is suitable for deferred entry of judgment.

“The DEJ provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. The sections provide that in lieu of jurisdictional and dispositional hearings, a minor [who is statutorily eligible and has been found by the juvenile court to be suitable] may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. [Citations.]” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558 (*Martha C.*))

Section 790 makes a minor eligible for DEJ if all the following circumstances exist: “(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense. [¶] (2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707. [¶] (3) The minor has not previously been committed to the custody of the Youth Authority. [¶] (4) The minor's record does not indicate that probation has ever been revoked without being completed. [¶] (5) The minor is at least 14 years of age at the time of the hearing. [¶] (6) The minor is eligible

for probation pursuant to Section 1203.06 of the Penal Code.” If the minor fulfills each of these criteria, the prosecutor “shall” so notify the court.

“If the minor waives the right to a speedy jurisdictional hearing, admits the charges in the petition and waives time for pronouncement of judgment, the court may summarily grant DEJ or refer the matter to the probation department for further investigation.” (*Martha C.*, *supra*, 108 Cal.App.4th at p. 559.) “When directed by the court, the probation department shall make an investigation and take into consideration the [minor’s] age, maturity, educational background, family relationships, demonstrable motivation, treatment history, if any, and other mitigating and aggravating factors in determining whether the minor is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs would accept the minor. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, and rehabilitation of the minor.” (§ 791, subd. (b).)

The fact that the minor meets the statutory criteria for eligibility does not mean the minor is automatically entitled to DEJ. Rather, a grant of DEJ is a matter addressed to the discretion of the juvenile court. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607.) After qualifying for DEJ, the court needs to consider whether minor is suitable for DEJ, under the factors specified in section 791, subdivision (b). “[T]he court makes an independent determination after consideration of the ‘suitability’ factors specified in rule 1495(d)(3) and section 791, subdivision (b), with the exercise of discretion based upon the standard of whether the minor will derive benefit from ‘education, treatment, and

rehabilitation’ rather than a more restrictive commitment. [Citations.]” (*In re Sergio R.*, at p. 607, fn. omitted.)

Thus, because the prosecutor found that the minor fulfilled each of the requirements set forth in section 790, subdivision (a), the prosecutor was required by law to notify the juvenile court and minor’s counsel that he was eligible for court consideration of his suitability for DEJ.

DISPOSITION

The jurisdictional findings and dispositional orders are vacated. The matter is remanded to the juvenile court with directions to proceed under sections 790 et seq. to determine whether the minor is suitable for deferred entry of judgment.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.